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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network	)	CC Docket No. 95-115

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REPLY COMMENTS OF TELEPHONE ELECTRONICS CORPORATION

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SUMMARY

Telephone Electronics Corporation ("TEC") supports the Federal Communications Commission's ("FCC's") efforts to increase telephone subscribership. In these reply comments, however, TEC agrees with the majority of commenters in this proceeding that oppose the Commission's proposed prohibition on the disconnection of local service for failure to pay interstate toll charges, new federal regulations mandating the provision of interstate only toll blocking, and the Commission's proposal to require a reduction in deposit requirements for local service for certain subscribers.

In its original comments, TEC demonstrated that the FCC lacks jurisdiction to promote telephone subscribership by prohibiting disconnection of local service for nonpayment of interstate toll charges as proposed in the Commission's Notice of Proposed Rulemaking. A number of commenters have reached the same legal conclusion. Several comments concur that issues concerning disconnection of local service for nonpayment of interstate toll charges are more suited to local consideration and action than a national "one size fits all" mandate from the FCC. TEC also encourages the Commission to consider the studies described in the comments of other parties showing that a prohibition on disconnection of local service for nonpayment of interstate toll charges has not always had the effect the FCC seeks to obtain.

In these reply comments, TEC also supports the evidence presented by parties to this proceeding concerning the costs such new government regulation will place on both local exchange carriers ("LECs") and interexchange carriers ("IXCs"). These costs would arise from the increase in uncollectible toll charges and

modifications to billing activities which would be required under the proposed regulatory scheme. TEC also agrees with comments which offer evidence that LECs already possess a business incentive to maintain their current subscriber base and that there is no evidence that subscribers are not given a full and fair opportunity to work out any payment difficulties they may have with their LEC prior to disconnection.

The evidence submitted in this proceeding shows that mandating optional toll restriction is unnecessary as LECs are currently offering such restrictions in response to the needs of their subscribers. Additionally, the evidence shows that when toll blocking is offered, it is offered on both an interstate and intrastate basis. Provision of only interstate blocking will require extensive software modification and the modification costs will outweigh any additional benefit gained from interstate only toll blocking.

TEC also agrees with comments from parties who state that LEC deposit requirements are based on the legitimate business needs of carriers to shield themselves from losses. Any mandated reduction in deposits received would unnecessarily expose carriers to greater uncompensated losses. These losses will be inevitably passed on to the full body of subscribers leading to higher costs for subscribers overall.

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Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network	))))	CC Docket No. 95-115

To: The Commission

REPLY COMMENTS OF TELEPHONE ELECTRONICS CORPORATION

Telephone Electronics Corporation ("TEC"), by its attorneys, hereby replies to the comments filed by other parties in response to the Notice of Proposed Rulemaking ("NPRM") of the Federal Communications Commission ("FCC" or "Commission") regarding policies to increase subscribership and usage of the public switched network in the above-captioned proceeding.[1]

I. INTRODUCTION

As discussed in its initial comments, TEC is a privately-owned, small entrepreneurial company with operations centered in the rural areas of the United States. The company formed in 1923 when a husband-and-wife team began the operation of the local telephone company serving their hometown in Mississippi.

TEC consists mainly of six small local exchange carriers (LECs): Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Roanoke Telephone Company, and West Tennessee Telephone Company.

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[1] In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, Notice of Proposed Rulemaking, FCC No. 95-281, released July 20, 1995.

The largest TEC local exchange carrier, Bay Springs Telephone Company, serves 9,658 access lines, and the smallest TEC local exchange carrier, National Telephone Company of Alabama, serves 1,983 access lines. These LECs serve rural communities in Mississippi, Tennessee, and Alabama.

In its NPRM the Commission requested comment on mechanisms by which telephone subscribership could be increased. The Commission found that a major cause of low subscribership are customers whose local service is disconnecting because they could not pay their long distance bills. TEC respectfully submits that two of the FCC's proposals should not be adopted as they would exacerbate, rather than help solve the problems associated with increasing telephone subscribership. Specifically, the Commission proposed a prohibition on the disconnection of local telephone service for nonpayment of interstate toll charges ("disconnection for nonpayment" or "DNP") and a mandate that LECs provide interstate only toll blocking or restriction services at the option of the customer ("interstate only toll blocking"). A majority of the parties commenting on this proceeding oppose the FCC's proposals to prohibit local DNP and mandate the availability of interstate only toll blocking. TEC appreciates the opportunity to reply to the comments filed by other parties addressing proposals for increasing telephone subscribership.

II. THE FCC MAY NOT AND SHOULD NOT PROHIBIT DNP

The FCC has no authority to prohibit, and has articulated no adequate policy reasons for prohibiting DNP. As an initial matter, the FCC has no jurisdiction to regulate DNP in order to increase local subscribership. Even if it did have jurisdiction, the FCC should not exercise it because local service DNP is inherently intrastate. Moreover, given evidence in the record that DNP does not increase subscribership, as well as the important role of DNP in encouraging subscribers to use voluntary blocking, prohibiting DNP would be bad policy.

A. THE FCC LACKS JURISDICTION TO REGULATE DNP OF LOCAL PHONE SERVICE

In its initial comments, TEC demonstrated that the FCC lacks jurisdiction to regulate DNP of local service for failure to pay interstate toll charges.[2] A number of commenters have reached the same legal conclusion.[3] A close examination of the result sought by the FCC in its proposed rules reveals that FCC action in this area is not supported by the FCC's jurisdictional grant.

In its NPRM, the Commission proposes to allow restriction of interstate toll services for failure to pay interstate toll charges.[4] However, the NPRM goes on to indicate that the FCC believes it has the authority to prevent DNP of local service because local service is required to facilitate access to interstate communications services. The case cited by the FCC, Public Service Commission of Maryland, Memorandum Opinion and Order, 4 F.C.C. Rcd. 4000 (1989),[5] as supporting its grant of

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2 TEC Comments at 6.

3 See Gateway at 11-13; NYNEX at 5-6; Bell Atlantic at 10-11; and MCI at 9.

4 NPRM at ¶ 31.

5 NPRM at ¶ 32.

jurisdiction was premised on the inability of carriers to segregate local and interstate service for the purpose of restricting access to the network.[6] However, the rules proposed by the FCC assume that interstate toll service can be interrupted while retaining a connection to the local loop. This case cited by the FCC, therefore, does not support FCC jurisdiction over local DNP. Indeed, if a subscriber's access to interstate toll services is interrupted for non-payment of interstate toll charges, the only remaining services are local and intrastate toll services. The DNP regulation of these services is clearly within state jurisdiction and outside the purview of the FCC.

TEC agrees with commenters who point out that issues concerning DNP are more suited to local consideration and action rather than a national "one size fits all" mandate from the FCC.[7] TEC encourages the Commission to consider carefully the comments of the Pennsylvania Public Utilities Commission (PaPUC) in this regard.[8]

The Commission in its NPRM cites the experience of Pennsylvania as a model for programs targeted to increase subscribership.[9] However, even PaPUC believes that these matters

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[6] Ohio Public Utilities Commission ("OhPUC") at 5; MCI at 8.

[7] Missouri Public Utilities Commission at 2 ("MoPUC"); Cincinnati Bell Telephone at 3,12; New York Department of Public Service at 1; Pennsylvania Public Utilities Commission at 7 ("PaPUC"); Alaska Public Utilities Commission at 1 ("AkPUC"); Indiana Public Utilities Commission at 6 ("IndPUC"); United States Telephone Association at 2 ("USTA"); Alaska Telephone Association at 1; NARUC at 4-7; Rochester Telephone Corporation at 1 ("Rochester"); and Bell Atlantic at 1-2.

[8] PaPUC at 6.

[9] NPRM at ¶ 11.

are more appropriate for local resolution. Additionally, more recent subscribership information demonstrates that the prohibition on local DNP is not the panacea the Commission believes it to be.[10] As MCI points out, other states have equalled or surpassed the subscribership rates of Pennsylvania without a prohibition on DNP of local service.[11] The results achieved in these states highlight the local nature of subscribership efforts and show that means other than DNP prohibition are more effective in increasing local subscribership. State regulators are in a better position to take the composition and needs of their populations into account when fashioning methods to increase subscribership. Each state should be permitted to tailor remedial measures affecting local rates and local service to the needs of its citizens.

B. THE FCC'S PROPOSED PROHIBITION ON DNP IS NOT "NARROWLY TAILORED" AND EVIDENCE DOES NOT SHOW THAT ITS BENEFITS WILL JUSTIFY ITS COSTS.

In the NPRM, the Commission contends that many individuals who do not currently subscribe to telephone service were subscribers at one time and had their local phone service disconnected because of their inability to pay long distance charges.[12] Therefore, the Commission proposes to prohibit DNP of local telephone service

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10 An examination of subscribership rates shows that states which have DNP prohibitions fall both above and <u>below</u> the national average. Ameritech at 8; NYNEX at 5 n. 5.

11 MCI at 7.

12 NPRM at ¶ 27.

based on non-payment of interstate telephone charges in order to allow low-income individuals to retain telephone service.[13]

In attacking an apparent surface cause of low subscribership, the FCC appears to disregard the root cause - subscribers that are unable or unwilling to pay long distance billing. Plainly, if a carrier is not allowed to disconnect a subscriber's local service for failure to pay toll charges the number of DNP disconnections will decrease.[14] However, the Commission's proposal does not address the circumstances which lead subscribers to incur excessive toll charges in the first place.

The FCC's proposal does not address the cause of local DNP -- the fact some subscribers are unwilling or unable to pay toll charges. The Commission's proposal to prohibit local DNP is inappropriate as it responds to a symptom of a subscriber's inability to control long distance usage without addressing the root cause.[15] The Commission's proposal does not address why people are unable to pay for the long distance services they use. Indeed, the proposed prohibition on DNP would reduce the incentive of consumers to agree to call blocking as a solution to unpaid long distance bills.[16]

It is far from clear that the inability to pay is the primary barrier to increasing telephone subscribership. TEC agrees with the Indiana Public Utilities Commission that factors other than

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13 NPRM at ¶ 27.

14 Gateway at 2.

15 Pacific Bell at 7; OAN Services Inc. at 3.

16 Ameritel at 5.

income need to be considered when evaluating telephone subscribership.[17] As explained in those comments, studies have shown that in some instances a choice is made by consumers not to subscribe to telephone service, whether because of cultural or religious beliefs or because a different allocation of financial resources is desired by the individual consumer. The goal of universal service should be to ensure that all who want telephone service have the opportunity to obtain it, not to shield subscribers from the consequences of failing to pay their long distance bills.[18]

The comments provide evidence that a DNP prohibition for failure to pay interstate toll charges will not have the effect of preventing disconnection of local phone service because in a significant number of cases, a subscriber who is delinquent in paying interstate toll charges will also be delinquent in paying local and intrastate toll charges as well.[19] Under the FCC's proposed rules, this subscriber can be disconnected for failing to pay these local charges. The NPRM does not give adequate weight to the mixed nature of a subscriber's failure to pay, nor does the Commission have the authority to regulate the collection of these purely intrastate charges.[20]

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17 IndPUC at 13.

18 See Gateway at 3 ("Disconnection for nonpayment has nothing to do with the geographic availability or rate affordability of telephone service.")

19 Sprint at 7, 12-13; LDDS WorldCom at 5; Southwestern Bell Telephone ("SWBT") at 15; Cincinnati Bell Telephone at 9; GTE at 28-29; Competitive Telephone Association at 7.

20 See NPRM at ¶ 12.

Additionally, in some jurisdictions the LEC purchases the accounts receivable from IXCs prior to sending the bill.[21] In this instance, no money is owed the IXC and the subscriber's entire payment goes to satisfy his debt to the LEC. When both interstate and intrastate charges are owed to one company, in this case the LEC, it would be arbitrary and capricious for the Commission to prohibit DNP for certain amounts owed to the LEC but not others.

TEC agrees with Pacific Bell and Ameritech that the local DNP prohibition proposed by the Commission is not narrowly tailored to achieve the goal of increasing local telephone service subscribership. The Commission is attempting to address a problem faced by very few subscribers or potential subscribers by implementing regulations which will affect <u>every</u> local telephone subscriber.[22]

1. The FCC's Proposed DNP Restriction Does Not Adequately Consider the Costs to Carriers.

Commenters which support the proposition that all services should be completely unbundled with regard to payment and disconnection for failure to pay,[23] ignore the reality that (1) consumers prefer to receive a single bill for all telephone service, (2) multiple balance billing is not widely available, and (3) allocation of payments made must be fairly determined and regulated by both state regulators and the FCC.[24]

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[21] OhPUC at 3-4.

[22] Pacific Bell at 17; Ameritech at 4.

[23] Idaho Public Utilities Commission at 2; NY Public Utility Law Project at 4-5.

[24] <u>See</u> Rochester at 5-6.

As the comments point out, a local DNP prohibition for non-payment of only interstate charges would require all carriers to implement multiple balance billing[25] and would require customers to allocate partial payments to the different services provided during a billing period. TEC submits that its local customers prefer to receive a single bill for all telephone services. Further inquiry must be made into the cost and feasibility of multiple balance billing.[26] In the event that an allocation is not made by the subscriber, regulations would be required to direct the allocation of partial payments made.[27] The fact that LECs are often the billing entities for IXCs also leads to an inherent conflict and difficulty in allocating partial payments.[28]

TEC also asks the Commission to carefully consider the comments which demonstrate a substantial increase in uncollectible charges in states where DNP is prohibited.[29] In several states the rate of uncollectibles has risen fourfold since the DNP prohibition was implemented. The threat of local DNP is an efficient and effective way to ensure payment of long distance charges. Without local DNP, there is no incentive for unscrupulous subscribers to

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25 Illinois Consolidated Telephone Corp. at 3; Maine Public Utilities Commission at 3; PaPUC at 8.

26 IndPUC at 4.

27 Rochester at 5-6.

28 USTA at 6; Sprint at 10.

29 Commenters reported an increase in uncollectible charges in DNP prohibition states two to four times that found in states where DNP is allowed. See Bell Atlantic at 3; MCI at 15; Gateway at 8; OAN Services, Inc. at 3.

pay their long distance bills.[30] The additional cost of uncollectibles and collection efforts that would result from a federal DNP prohibition would need to be passed on to the general body of subscribers and would increase the overall cost of both local and long distance service.[31] Such an increase in rates could ultimately lead to a drop in subscribership by individuals who have responsibly paid their telephone bills but are forced to discontinue local service when it becomes to expensive due to the mounting uncollectible charges of other subscribers.

TEC agrees with those commenters who believe that extension of a broad DNP prohibition to all subscribers will give unscrupulous individuals the opportunity to take advantage of the fact that they are free to run up long distance charges without risking their local phone service.[32] The FCC should consider solutions to the genuine difficulty some individuals are experiencing in paying toll charges, rather than prohibit DNP for <u>all</u> subscribers regardless of their income or risk of disconnection.[33]

2. LECs Use DNP as a Last Resort for Nonpayment of Charges Because They have an Incentive to Keep Subscribers Connected.

TEC agrees with those commenters who point out that it is in a carrier's best interest to retain its current subscribers, even if those subscribers are behind in paying their bills.[34] The

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30 Ameritel at 2-3.

31 Ameritel at 5.

32 LDDS WorldCom at 6; OAN Services, Inc. at 3; USTA at 7; Pacific Bell at 19.

33 Pacific Bell at 7.

34 Sprint at 3, 8; Alaska Telephone Association at 3.

comments show that carriers are currently using DNP as a last resort for non-paying customers.[35] In the absence of evidence that subscribers are not given a full and fair opportunity to work out a payment plan with their LECs, the Commission should allow carriers to continue to pursue the course of action which is in their best business interest -- the attraction and retention of subscribers.

TEC also agrees with those parties that believe it is in a carrier's best business interest to target programs to encourage subscribership among disenfranchised or underserved communities.[36] The Commission should rely on competitive market forces rather than institute new federal government regulations because, as new market entrants seek to acquire a share of the local market, they will find that those individuals who are most interested in subscribing to competitive services are those that do not currently have phone service.

III. MANDATING THE AVAILABILITY OF INTERSTATE ONLY TOLL BLOCKING IS BOTH UNNECESSARY AND COSTLY

As the comments indicate, carriers are offering toll blocking services on a widespread basis in response to the needs of their subscribers.[37] Since carriers are already offering toll blocking

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35 MoPUC at 3-4; GTE at 30; SWBT at 18-19; BellSouth at 3.

36 MFS Communication Company at 3; MCI at 5; SWBT at 13-14.

37 Southwestern Bell Telephone at 17; Idaho Public Utilities Commission at 2; Alaska Telephone Association at 2; US West at ii; Cincinnati Bell Telephone at 8; BellSouth at 6; United Utilities at 6; Telephone Associate of Maine at 1; NYNEX at 2, 6-7; Ameritech at 3; Pacific Bell at 14-15; Colorado Public Utilities Commission at 4; GTE at 19.

services to meet the needs of their customers, there is no need for the FCC to mandate a toll blocking scheme.[38]

Those carriers that voluntarily offer toll blocking services block both interstate and intrastate toll calls.[39] Extensive modifications of existing switch software will be required to allow carriers to block interstate toll calls as opposed to <u>all</u> toll calls.[40] The Commission must also consider alternate means by which a subscriber can incur toll charges, for example, services accessed through a 1-800 number. The Commission must develop a more thorough record regarding the impact of the costs associated with blocking only interstate toll calls, especially in light of the widespread availability of toll blocking, before mandating it.

The suggestion by the FCC that carriers place a cap on the number of minutes or dollars a customer can use for interstate toll calls would require the capability for "real-time" monitoring of call frequency and usage for every account. As the comments indicate, many carriers use third party billing services and do not have the capability to offer this service.[41] Comments were also submitted highlighting the difficulty of assessing the ultimate

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[38] TEC Comments at 4.

[39] Rochester at 6; Ameritech at 7-8; GTE at 19; MCI at 20; Sprint at 12; USTA at 4-6.

[40] For example, GTE offers 1+ blocking for both interstate and intrastate calls, but cannot prevent subscribers from accessing 1-800 services. GTE at 19.

[41] Telephone Association of Maine at 2; Illinois Consolidated Telephone Corporation at 2.

cost of a call in light of widespread calling plan discounts.[42] TEC agrees with these comments.

IV. CARRIERS BASE DEPOSIT REQUIREMENTS ON LEGITIMATE BUSINESS RISKS

The FCC has suggested the adoption of new federal government regulations that will mandate reductions in deposit requirements for certain subscribers.[43] TEC agrees with commenters that in a competitive market carriers have a disincentive to require deposits which are disproportionate to the risk of loss faced by the carrier.[44] The widespread availability of toll restriction options allows both the carrier and the subscriber to limit their potential financial exposure. It would be unreasonable and inequitable for the Commission to require carriers to absorb losses which could be covered by reasonable deposit requirements. If the FCC mandates reductions in deposits, losses generated by inadequate deposits will be passed through to other customers who have responsibly paid their bills.[45]

V. CONCLUSION

A majority of the parties to this rulemaking proceeding oppose a prohibition on local DNP and new federal government regulations that would mandate the availability of interstate only toll blocking. TEC supports these comments. The record shows that the Commission's proposed regulatory scheme fails to directly address

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[42] TDS Telecom at 6.

[43] NPRM at ¶ 26.

[44] United Utilities at 2.

[45] GTE at 15.

the problem the Commission seeks to remedy and would impose costs far in excess of any benefit which would be received.

The majority of comments also demonstrate that voluntary toll blocking is widely available and that carriers use all reasonable means to ensure that subscribers have the opportunity to obtain and avoid termination of local service. TEC believes that it would, therefore, be unreasonable for the Commission to now mandate that carriers bear the substantial costs of implementing interstate only toll blocking or reduced deposit requirements without gathering any information regarding those costs.

Respectfully submitted,

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Dated: October 27, 1995

C1700237

CERTIFICATE OF SERVICE

On this 27th day of October, 1995, the foregoing Reply to Comments were served on the following persons, via first-class mail, postage pre-paid and via hand-delivery to those persons marked by an asterisk:

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